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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

EASTSIDE MENTAL HEALTH CENTER, INC.,
Petitioner,

v.

DAVID R. WILLIAMS,
Respondent.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit**

BRIEF FOR THE STATES OF LOUISIANA, NEBRASKA, SOUTH CAROLINA AND TEXAS AS AMICI CURIAE IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI

WILLIAM J. GUSTE, JR., *Counsel of Record*
Attorney General of the State of Louisiana
P.O. Box 44005
Baton Rouge, Louisiana 70804
(504) 342-7013
Counsel for the State of Louisiana

PAUL L. DOUGLAS, *Counsel of Record*
Attorney General of the State of Nebraska
State Capitol
Lincoln, Nebraska 68509
(402) 471-2682
Counsel for the State of Nebraska

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DANIEL R. MCLEOD, *Counsel of Record*
Attorney General of the State of South Carolina
Rembert C. Dennis Office Bldg.
P.O. Box 11549
Columbia, South Carolina 29211
(803) 758-3970

LARRY W. PROPES
General Counsel
South Carolina Department of Mental Health
2414 Bull Street
P.O. Box 485
Columbia, South Carolina 29202
(803) 758-3702
Counsel for the State of South Carolina

MARK WHITE
Attorney General of the State of Texas

JOHN W. FAINTER, JR.
First Assistant Attorney General

RICHARD E. GRAY, III, *Counsel of Record*
Executive Assistant Attorney General

PAUL R. GALVIA
Chief, State and County Affairs Division

MARTHA ALLEN
Assistant Attorney General
14th at Colorado Streets
P.O. Box 12548
Austin, Texas 78711
(512) 475-3131
Counsel for the State of Texas

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BRIEF FOR THE STATES OF LOUISIANA, NEBRASKA, SOUTH CAROLINA AND TEXAS AS AMICI CURIAE IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI

Pursuant to Rule 36 of this Court's Rules, the States of Louisiana, Nebraska, South Carolina and Texas, by their respective Attorneys General, submit this brief as *amici curiae* in support of the petition of Eastside Mental Health Center, Inc. herein for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit entered March 5, 1982.

INTEREST OF THE STATE OF LOUISIANA

Louisiana's Department of Health and Human Resources ("Department") administers a comprehensive

system of mental health facilities, which the Louisiana legislature has determined to be an integral part of the public health services provided by the State to all of its citizens. *See* La. Rev. Stat. Ann. § 36:258(H) (Supp. 1982). In part due to the urging of the Special Master appointed to oversee implementation of the court order in *Gary W.* v. *State of Louisiana*, 437 F. Supp. 1209 (E.D. La. 1976), the Louisiana legislature has recently authorized and funded new community-based facilities to provide residential mental health and mental retardation services similar to those provided by Alabama's community mental health centers. La. Rev. Stat. §§ 28:200, *et seq.* (Supp. 1982); §§ 28:380, *et seq.*; (Supp. 1982);§ 28:475; and § 46:2390 (Supp. 1982). The legislature has specifically provided that it is the "primary endeavor" of the Department "to transfer responsibility for the administration of existing facilities or [new] facilities . . . to local associations, *nonprofit corporations*, police juries [counties], school boards, municipalities, or *other public agencies*" providing mental health services. *Id.* § 28:201 (emphasis added).

Thus, Louisiana's new deinstitutionalized, decentralized, community-based mental health services will be provided through programs operated by or under the direction of the Department in public as well as privately-owned non-profit facilities operating under comprehensive and strict State regulation. *Id.* § 28:203; *see also* § 28:478(b) (Supp. 1982).

Given the diminishing mental health budgets of the State and of certain private non-profit providers of mental health services, and given the unconventional shift schedules of many mental health employees, strict regulation of wage and hour practices under the Fair Labor Standards Act ("FLSA") at the aforementioned

facilities would require the State to abandon or to severely limit certain needed programs, and force certain private non-profit organizations to cease (or never commence) providing mental health services on behalf of the State. Louisiana's efforts to implement the desired deinstitutionalization will be thwarted thereby.

Thus, rulings such as those of the Eleventh Circuit below would dictate — and significantly reduce — the quality and quantity of Louisiana's community mental health and related services.

INTEREST OF THE STATE OF NEBRASKA

Nebraska operates a comprehensive and regionalized mental health system which makes available to all Nebraska citizens extensive care and treatment for mental illness, mental retardation, and drug and alcohol abuse. Neb. Rev. Stat. §§ 71-5001, *et seq.* (1976); §§ 71-5016, *et seq.* (Supp. 1978); and §§ 83-1,141, *et seq.* (1976). The Nebraska legislature has announced that it is "the public policy of the State of Nebraska that *all persons* residing in Nebraska shall have access to mental health facilities, programs, and services." Sec. 5001, *supra* (emphasis added). The Governor of Nebraska has designated a Coordinator of Human Services to oversee the activities of the Department of Public Institutions, which administers mental health services, the Department of Health, and four other State agencies providing related social services. Nebraska thus considers mental health services to be as essential and "integral" to the State as other public health services.

As part of the overall deinstitutionalization and decentralization of the State's mental health system, accelerated by the Consent Decree entered in *Horacek* v. *Exon*, Civ. No. 72-L-299 (D. Neb. October 31, 1975)

(unpublished order), the Nebraska legislature has provided that county and local governments may enter into "interlocal cooperative agreements" to provide community-based residential mental health and related services through regional governing boards and subordinate state and private non-profit facilities. *See* Neb. Rev. Stat. §§ 71-5004 to -5009. These latter community-based facilities are similar in many respects to Alabama's community mental health centers. Their employees work unconventional shifts and often sleep on the premises. Although they are paid for any nighttime interruptions, they are generally not paid for time spent actually sleeping.

Imposition of FLSA liability upon Nebraska's mental health system would significantly dictate the future operations of, and employment practices at, these local facilities. The resulting increased cost of operating these facilities would require limitations on, and perhaps even abandonment of, certain important community mental health programs in Nebraska.

INTEREST OF THE STATE OF SOUTH CAROLINA

In addition to its six major residential institutions, the South Carolina Department of Mental Health operates seventeen major community mental health centers located throughout the State, pursuant to S.C. Code §§ 44-15-10, *et seq.* (1976).

In 1981, one center located in Greenville, South Carolina, established a private, non-profit corporation called the Piedmont Treatment Home for Adolescents, Inc., to provide residential mental health services for emotionally-disturbed adolescents. The non-profit corporation opened its first home in 1981 for boys, and is currently negotiating with the State to open a home for

girls. Piedmont's primary funding is provided directly by the Department of Mental Health, which also regulates Piedmont's operations according to strict State standards. S.C. Code § 44-15-80 (Supp. 1981). The legislature has authorized the funding of mental health programs operated by local governments, "political subdivisions . . . or any *non-profit corporation*. . . ." (Emphasis added). Sec. 44-15-20; *see also* Sec. 44-15-30 to -50.

By 1987, the Department of Mental Health plans to open seventeen similar treatment homes for children, which will employ a total of 102 people. Additionally, plans are being formulated to use this same community-oriented model for the deinstitutionalization of, and provision of community residential care and treatment for, hundreds of adult chronically mentally-ill patients who are currently institutionalized.

Application of the FLSA to South Carolina's community mental health facilities, such as the Piedmont Treatment Home and similar planned facilities, would threaten the Department's deinstitutionalization movement and its ability to operate small residential community units to provide needed mental health services. Federal wage-hour regulation would thus interfere with South Carolina's sovereign authority to decide how best to deliver mental health services to all of its citizens.

Finally, application to South Carolina's mental health system of the Eleventh Circuit's conclusion that state mental health facilities do not serve an "integral governmental function," and thus are subject to FLSA regulation, would directly threaten the future course and viability of *all* State mental health facilities. South Carolina believes that it should be allowed the flexibility to develop a mental health care delivery system best suited

to the needs and resources of the State. That flexibility would be largely destroyed by imposition of FLSA liability upon the State's mental health system.

INTEREST OF THE STATE OF TEXAS

Texas has long provided a variety of mental health and related services through public and private non-profit agencies at various levels.[1] While Texas believes it compensates its approximately 10,000 mental health employees adequately, it has long assumed that its many mental health facilities and their employees are immune from FLSA regulation under *National League of Cities*, 426 U.S. 833 (1976).

Texas' budget for mental health services has not provided for increased operating costs arising from significant FLSA liability. Therefore, imposition upon Texas' mental health facilities of rulings such as those below—particularly the ruling that mental health facilities do not serve an "integral state function"—would be devastating to the State's efforts to provide a comprehensive and effective mental health system.

ARGUMENT

1. The Decision Below Would Allow Federal Regulation To Materially Intrude Upon These States' Sovereignty

The common concern of these *amici* States can be simply put: application to them of rulings such as those below would result in significant interference with their

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[1] The Texas legislature has recently stated that "it is the policy of [the] State [of Texas] that when appropriate and feasible, mentally ill and mentally retarded persons shall be afforded treatment in their own communities." Tex. Code Ann. art. 5547-201, Sec. 1.01(c)(Supp. 1982). Such services are to be provided by "local agencies and private organizations", *id.* Sec. 1.01(b), "consistent with rules, regulations and standards of the [D]epartment [of Mental Health and Mental Retardation]. . . ." Art. 5547-203, Sec. 3.12(c); *see* art. 5547-204, Sec. 4.01 (Supp. 1982).

decision-making authority regarding state mental health policy; require substantial restructuring of their present and proposed community mental health care delivery systems; cause significant decreases in the quality and quantity of state mental health services provided or to be provided; and necessitate major alterations in employment policies and practices affecting many mental health employees in these States.

Moreover, the sudden, unanticipated and unbudgeted imposition of federal wage and hour liability upon these States' community mental health systems would dictate wholesale changes in the manner in which mental health services are provided. These States' budgets for such services are comparatively small, while their potential liability for FLSA minimum wage and overtime pay is very large. Steadily-diminishing state and federal funds cannot be readily shifted from other social service programs to mental health programs — certainly not without corresponding cut-backs in such other programs.

Although these States' community mental health systems are not identical to each other's or to Alabama's, they share with Alabama's the common characteristic of increasing deinstitutionalization and decentralization of programs and facilities. Evolving enlightenment regarding the true capabilities and needs of many mentally-ill and mentally-retarded persons, and increased awareness[2] of the deleterious effects of centralized in-

[2] This awareness has developed in part as a result of litigation in several states, commenced by mental health interest groups and others, designed in part to achieve deinstitutionalization of state mental health systems. *See, e.g., Gary W.* v. *State of Louisiana*, 437 F. Supp. 1209 (E.D. La. 1976); *Horacek* v. *Thone*, Civ. No. 72-L-299 (D. Neb. September 15, 1981) (unpublished order); *Burnham* v. *Department of Public Health of Georgia*, 349 F. Supp. 1335 (N.D. Ga. 1972), *rev'd*, 500 F.2d 1319 (5th Cir. 1974) *(per curiam)*; *Wyatt* v. *Stickney*, 344 F. Supp. 373 (M.D. Ala. 1972), *aff'd in part and rev'd in part sub nom. Wyatt* v. *Aderholt*, 503 F.2d 1305 (5th Cir. 1974).

stitutionalization of such persons together with seriously disturbed mentally-ill persons, have led these States (and many others) to decentralize their mental health systems generally. Their goal is to allow as many socially functional mentally-afflicted persons as possible to live in residential mental health centers or group homes (or their equivalents), where they can lead relatively normal lives.

A consensus has arisen that this movement away from cloistered institutionalization and toward community integration of mentally-afflicted persons marks the most fundamental and positive change in mental health care theory and practice in this century. However, it entails significant diseconomies of scale and administration, due to the resulting proliferation of community mental health facilities and employees required to provide such fragmented services. Like most States, these *amici curiae* do not presently own or control sufficient numbers of small residential facilities suitable for group home settings. Thus, like Alabama, facilities (or portions thereof) such as nursing homes, hospitals or former personal residences are often leased or otherwise occupied for state use. In some cases, facilities or programs owned or operated by private non-profit organizations[3] have been adapted to state use, where that is the most efficient and cost-effective means of providing community mental health services.

Use of facilities and programs owned by private non-profit organizations will continue for some time, due primarily to the States' inability to bear the sky-rocketing costs of building or purchasing, and maintaining large numbers of new small facilities.

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[3] *E.g.*, the Volunteers of America, Salvation Army, United Way agencies, and similar non-profit groups devoted to providing social services for needy persons.

Thus, the decision of the Court of Appeals below, with its wholesale application of FLSA regulation to virtually all facilities not actually owned by the States, threatens to stifle—and possibly to reverse—the salutary deinstitutionalization movement. Faced with the alternative of maintaining outmoded and crowded centralized institutions and programs, or incurring prohibitive FLSA liabilities through deinstitutionalization, many States will, regrettably, be forced to remain as centralized as possible as a result of the decision below.

The resulting interference of FLSA regulation with the States' sovereign authority to decide how they can best deliver mental health services would constitute the very "displace[ment of] the States' freedom to structure integral operations in areas of traditional governmental functions" which this Court sought to prevent in *National League of Cities* v. *Usery*, 426 U.S. at 852. These States heartily agree with this Court that " 'the authority to make . . . fundamental . . . decisions' " such as this is "perhaps the quintessential attribute of sovereignty. Indeed, having the power to make decisions and set policy is what gives the State its sovereign nature." *Federal Energy Reg. Comm.* v. *Mississippi*, ___ U.S. ___, 102 S.Ct. 2126, 2138 (1982) ("*FERC* v. *Mississippi*"). Yet the decision below would, in many respects, destroy that very "quintessential attribute of sovereignty."

Further, the Eleventh Circuit's unanticipated and unprecedented conclusion that State mental health facilities serve no "integral governmental function" presents a direct threat to the continued operation of *all* such facilities. Under that view even *re*centralization of all facilities and *re*institutionalization of all patients would not necessarily immunize state mental health facilities from the burden of FLSA regulation.

Certainly none of these States regards provision of mental health services to be any less important or "integral" than provision of other forms of "public health" services protected by *National League of Cities*' overruling of *Maryland* v. *Wirtz*, 392 U.S. 183 (1968), and by the former decision's designation of "public health" as one of the demonstrably "integral" state functions immunized from FLSA regulation by the Tenth Amendment. Indeed, these States have long considered their mental health programs to be integral parts of their overall "public health" systems.

Since State mental health services, like other public health services, are available to all citizens of the States, the Eleventh Circuit's articulation of what petitioner herein has aptly referred to as the "100% impact" test to distinguish "mental health" from "public health" simply misses the mark. Obviously, the police and fire services involved in *National League of Cities* are not utilized by *all* citizens, and are never utilized by many during their lives. The same is true of the hospital services involved in *Maryland* v. *Wirtz*, *supra*. The point is that such services—like mental health services—are always *available* to all citizens of the States.

Moreover, distinguishing "mental" from other "public" health facilities would generate absurd results. Into which arbitrary category falls care for *senile* persons—suffering from purely "physical" deterioration—who are often treated in facilities providing "mental health" services? Under the Eleventh Circuit's distinction, where does treatment for alcoholism fall? Or epilepsy?

In short, the Eleventh Circuit's decision would force these States to restructure their mental health care delivery systems, and to make artificial and unsupportable distinctions between "mental health" and other "public

health" programs, merely to avoid imposition of significant federal FLSA liability. There could be no clearer example of direct and improper federal intrusion upon State sovereignty.

II. The Decision Below Would Materially Reduce The Quality And Quantity Of Mental Health Services Provided By These States

Both State and federal funds for mental health programs have been steadily diminishing during the past several years, despite growing awareness of the need for improvements in the quality and quantity of such services. At the federal level, significant cut-backs in revenue-sharing funds and the shift from federal grants for specific purposes, once enjoyed by state mental health facilities, to block grants, which may be utilized for purposes other than community mental health care, has resulted (or will result) in an overall decrease in federal support for state mental health systems.[4] Moreover, many States, which are absorbing increasingly greater responsibilities for provision of social and other services to their citizens, have had to steadily reduce their overall mental health budgets either absolutely or in comparison with other expenditures.

Even if federal and state funding continued at present levels, imposition of FLSA liability on state mental health systems would seriously affect the quality and quantity of their services. For example, South Carolina, which is contemplating expansion of its new program of residential care for emotionally-disturbed children, may be faced with a decision similar to that faced by state and local

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[4] For example, federal funding for Nebraska's community mental health centers is projected to decrease from approximately $2.9 million in FY 1981 to approximately $920,000 in FY 1984.

governments in *National League of Cities*—*i.e.*, "whether to eliminate the program entirely or to substantially reduce its beneficial aspects" as a result of potential FLSA liability. *Id.* at 847.

Thus, imposition of FLSA liability on these States' community mental health systems would cause a "significant impact on the functioning of the governmental bodies involved," *id.* at 846—*i.e.*, the very "forced relinquishment of important governmental activities" which *National League of Cities* sought to prevent. *Id.* at 847.

III. The Decision Below Should Be Reversed Under National League Of Cities

The factual setting of this case and the potential direct impact on these States of FLSA liability—unlike the more diffuse effects of federal regulation in *United Transportation Union* v. *Long Island Railroad Co.*, ___ U.S. ___, 102 S. Ct. 1349 (1982); *Hodel* v. *Virginia Surface Mining & Reclamation Association, Inc.*, 452 U.S. 264 (1981); and *FERC* v. *Mississippi*, *supra*—are very similar to those in *National League of Cities*. There, as here, the issue was whether FLSA minimum wage and overtime regulation of state programs—and the resulting interference with state decision-making authority regarding policy and employment decisions—offended the Tenth Amendment:

> *One undoubted attribute of state sovereignty is the States' power to determine the wages which shall be paid to those whom they employ in order to carry out their governmental functions, what hours those persons will work and what compensation will be provided where these employees may be called upon to work overtime.* The question we must resolve here, then, is whether these determinations are " 'functions essential to separate and independent ex-

> istence,' " . . . so that Congress may not abrogate the States' otherwise plenary authority to make them. [*Id.* at 846; emphasis added.]

And there the Court reached a conclusion which should be reached in this case:

> If Congress may withdraw from the States the authority to make those fundamental employment decisions upon which their systems for performance of these functions must rest, we think there would be little left of the States' " 'separate and independent existence.' " *Coyle*, 221 U.S. at 580, 55 L.Ed. 853, 31 S.Ct. 688. Thus, even if appellants may have overestimated the effect which the Act will have upon the current levels and patterns of governmental activity, *the dispositive factor is that Congress has attempted to exercise its Commerce Clause authority to prescribe minimum wages and maximum hours to be paid by the States in their capacities as sovereign governments. In so doing, Congress has sought to wield its power in a fashion that would impair the States' "ability to function effectively in a federal system," Fry*, 421 U.S. at 547 n.7, 44 L.Ed.2d 363, 95 S.Ct. 1792. This exercise of congressional authority *does not comport with the federal system of government embodied in the Constitution.* [*Id.* at 851; emphasis added.]

CONCLUSION

For the reasons set forth above, these States as *amici curiae* urge this Court to grant the petition for certiorari.

Respectfully submitted,

WILLIAM J. GUSTE, JR., *Counsel of Record*
Attorney General of the State of Louisiana
P.O. Box 44005
Baton Rouge, Louisiana 70804
(504) 342-7013
Counsel for the State of Louisiana

PAUL L. DOUGLAS, *Counsel of Record*
Attorney General of the State of Nebraska
State Capitol
Lincoln, Nebraska 68509
(402) 471-2682
Counsel for the State of Nebraska

DANIEL R. MCLEOD, *Counsel of Record*
Attorney General of the State of South Carolina
Rembert C. Dennis Office Bldg.
P.O. Box 11549
Columbia, South Carolina 29211
(803) 758-3970

LARRY W. PROPES
General Counsel
South Carolina Department of
Mental Health
2414 Bull Street
P.O. Box 485
Columbia, South Carolina 29202
(803) 758-3702
Counsel for the State of
South Carolina

MARK WHITE
Attorney General of the State
of Texas

JOHN W. FAINTER, JR.
First Assistant Attorney General

RICHARD E. GRAY, III, *Counsel of Record*
Executive Assistant Attorney General

PAUL R. GALVIA
Chief, State and County
Affairs Division

MARTHA ALLEN
Assistant Attorney General
14th at Colorado Streets
P.O. Box 12548
Austin, Texas 78711
(512) 475-3131
Counsel for the State of Texas